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6 PETER MARKGREN and
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

PETER MARKGREN and DARYL
STROHSCHEIN

Plaintiffs,

vs.

SAPUTO CHEESE USA INC.

Defendant.

CASE NO. 3:21-cv-429

**COMPLAINT FOR DISCRIMINATION
BASED ON AGE, HARASSMENT
BASED ON AGE, REVERSE GENDER
DISCRIMINATION, FAILURE TO
REASONABLY ACCOMMODATE A
DISABILITY AND PARTICIPATE IN
THE INTER-ACTIVE PROCESS,
DISABILITY DISCRIMINATION,
RETALIATION IN VIOLATION OF
FMLA, ADA AND ADEA, NEGLIGENT
INFILCTION OF EMOTIONAL
DISTRESS, NEGLIGENT HIRING AND
RETENTION, INTENTIONAL
INFILCTION OF EMOTIONAL
DISTRESS, WRONGFUL
TERMINATION IN VIOLATION OF
PUBLIC POLICY, and JURY DEMAND**

DEMAND FOR JURY TRIAL

(Title VII 42 U.S.C. §§ 2000e-2000e-17; Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.*; Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“ADA”); and Family and Medical Leave Act 29 U.S.C. §2601 *et seq.* (“FMLA”))

JURISDICTION

1. The jurisdiction of this Court is based upon the existence of a federal question and arises under Title VII, 42 U.S.C. §2000e et seq. (“Title VII”), The Age Discrimination in Employment Act 29 U.S.C. §§ 621-634 (“ADEA”), the Family and Medical Leave Act 29 U.S.C. §2601 *et seq.* (“FMLA”) and the Americans with Disabilities Act at 42 U.S.C. §12101 *et seq.* (“ADA”). As such, jurisdiction is conferred on this Court and Plaintiff is provided with the powers, remedies and procedures set forth in Title VII, § 2000e-5(f)(3), the ADEA 29 U.S.C. §626(b), the FMLA and the ADA. Supplemental jurisdiction over the tort claims exists pursuant to 28 U.S.C. § 1337(a).

INTRADISTRICT ASSIGNMENT AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

2. Venue is proper in this District pursuant to Title VII, 42 U.S.C. § 2000e-5(f)(3), the ADA, the ADEA and FMLA because the unlawful acts and practices alleged herein occurred in the Town of Almena, County of Barron, in Wisconsin, which are situated in this judicial district.

3. At all material times, Plaintiff Peter Markgren (“MARKGREN”), was a resident of the State of Wisconsin, County of Barron. Plaintiff Daryl Strohschein (“STROHSCHEIN”) was also a resident of the State of Wisconsin, County of Barron. The employment relationship upon which each of them sues herein was made in and to be performed in the Town of Almena, County of Barron, State of Wisconsin. At all material times, MARKGREN and STROHSCHEIN worked for Defendant SAPUTO CHEESE USA INC. whose parent corporation is SAPUTO INC. (“SAPUTO” or “DEFENDANT”) in Almena, WI. The address where MARKGREN and STROHSCHEIN last worked for Defendant SAPUTO was 1052 6th St., Almena, WI 54805. MARKGREN and STROHSCHEIN are informed and believe, and on that basis alleges, that at all times the individuals referred to in this Complaint were and are owners, directors, officers, managers, and/or operators of the business known as SAPUTO.

4. MARKGREN and STROHSCHEIN are informed and believe and thereon allege that SAPUTO is, and at all times herein mentioned, was, a corporation which was licensed to,

1 and was doing, business in Barron County, Wisconsin. Defendant is an entity subject to suit
 2 under the Title VII 42 U.S.C. § 2000e-2000e-17, the Age Discrimination in Employment Act, 29
 3 U.S.C. §§ 621-635, the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.* and the
 4 Family and Medical Leave Act 42 U.S.C. §12101 *et seq* as it is doing business in the State of
 5 Wisconsin.

6 5. SAPUTO entered into an employment relationship with MARKGREN beginning in
 7 approximately May 1987 when MARKGREN was hired by Twin Town Cheese Factory which
 8 was later acquired by SAPUTO. SAPUTO entered into an employment relationship with
 9 STROHSCHEIN who was hired by Twin Town Cheese Factory, later SAPUTO, in April 1984.
 10 He was promoted to a supervisor position in 2008. The injuries on which this action is based arise
 11 out of the aforementioned employment relationships.

12 6. In April 2020, MARKGREN and STROHSCHEIN each filed complaints of
 13 discrimination and harassment based on their age and gender with the Wisconsin Department of
 14 Workforce Development, Equal Rights Division against SAPUTO. MARKGREN also filed
 15 complaints of discrimination based on his disabilities and SAPUTO'S failure to reasonably
 16 accommodate those disabilities. He also reported that he was retaliated against for having
 17 complained about harassment by younger employees and for taking needed family and medical
 18 leave time in violation of the Federal Family and Medical Leave Act. These ERD administrative
 19 complaints resulted in companion complaints being filed with the Federal Equal Employment
 20 Opportunity Commission ("EEOC"). The Wisconsin Fair Employment Act ("WFEA") closed
 21 their investigations into MARKGREN'S and STROHSCHEIN'S administrative complaints in
 22 January-February 2021.

23 7. The EEOC issued MARKGREN and STROHSCHEIN each a right-to-sue notice
 24 on April 7, 2021 which was received on by MARKGREN and STROHSCHEIN or about April 12,
 25 2021. The notice gave each 90 days in which to bring a federal action.

26 8. By filing the above administrative complaints, MARKGREN and STROHSCHEIN
 27 have exhausted their administrative remedies and conferred the jurisdiction of this court.

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STATEMENT OF FACTS

2 9. MARKGREN began his employment with Twin Town Cheese Factory, later
3 SAPUTO, in May 1987. He began packing mozzarella cheese on the line then moved up to an
4 operator position. During the last several years MARKGREN worked as a Rotary Press
5 Operator on the upper make room for blue cheese and then the lower make room for blue cheese.
6 MARKGREN went above and beyond his job as operator by (i) often filling in on other shifts
7 when another operator called out; (ii) coming in when called during the middle of the night to get
8 the lower cheese filler running when maintenance couldn't get it working; and (iii) creating new
9 forms for making feta cheese including by drilling holes into the new forms, scraping them then
10 sanitizing them so the cheese would form correctly. He even volunteered, without pay, to
11 refinish cabinet doors and drawers from the break room prior to representatives from corporate
12 arriving so the break room would look nice. For approximately twenty years he trained new
13 hires on how to run his and other machines in the plant. His birthday is April 17, 1964.

14 10. In 2012, MARKGREN suffered a heart attack and went out on a medical leave of
15 absence. In May 2012 he underwent heart surgery for angioplasty (repair of arteries in his heart)
16 due to his severe coronary artery disease. Two stents were placed in his heart. He returned to
17 work in approximately June 2012. In 2013, MARKGREN had another stent placed in his left
18 anterior descending artery. In July 2013, he was transported via EMS from SAPUTO to the
19 hospital because he fainted at work due to an extremely high working temperature of over 100
20 degrees Fahrenheit and he'd been experiencing intermittent chest pain. He was diagnosed with
21 coronary artery disease, congested heart failure, hypertension and severe depression. He went
22 out on short term disability/family leave. In August 2013, his physician was concerned with
23 MARKGREN exacerbating his orthostatic hypotension by working in a very hot environment
24 and gave him a work restriction of working indoors at less than 100 degrees Fahrenheit. He was
25 also subsequently diagnosed with high blood pressure. From then forward, MARKGREN
26 continued to have a serious heart condition. This condition was exacerbated during the summers
27 because the temperatures inside the SAPUTO plant often exceeded 100 degrees Fahrenheit.

1 11. In 2014, MARKGREN suffered a back strain. The doctor also noted he had
2 problems with a disc and diagnosed him with sciatica. The extreme pain from the sciatica
3 continued through-out his employment and at times, interfered with his ability to repetitively
4 bend at his job. In December 2016, MARKGREN went on family leave because he had bariatric
5 surgery and returned in early 2017. He suffered a worker's compensation injury on or about
6 June 2, 2017. He went to the emergency room but did not take any time off.

7 12. In 2017, when the new air-conditioned plant began operating, MARKGREN
8 asked to transfer to that plant because of his heart condition and because working in an air-
9 conditioned plant would comply with his doctor's work restrictions/requested accommodations.
10 SAPUTO, specifically Robin Sorey ("Sorey") in Human Resources, told him that if he
11 transferred his pay would be reduced by almost \$2.00/hour and denied his request.
12 MARKGREN was never transferred to the newly built air-conditioned plant also in Almena.

13 13. In approximately 2017, SAPUTO changed the personal protective gear ("PPG")
14 MARKGREN had to wear when cleaning his machines. Prior to 2017, the PPG consisted of a
15 face shield, gloves and a light disposable apron. In 2017, the new PPG included a face shield,
16 gloves and a full bodysuit including a heavy rubber coat and heavy rubber pants. The increased
17 weight and restrictive air flow caused MARKGREN to get light-headed and dizzy while wearing
18 the PPG. MARKGREN told his supervisor, Shann Munson ("Munson") and Tammy Bertelsen
19 ("Bertelsen"), SAPUTO'S Health & Safety Specialist, this was happening and the adverse
20 effects it was having on his heart and health. MARKGREN asked for better ventilation in his
21 work area. Bertelsen's only recommendation was that MARKGREN should take more breaks
22 while cleaning his machine; however, this was not possible because clean up lasted from 6:00
23 a.m. until 11:00 a.m. without a break and cheese production resumed again at approximately
24 11:30 a.m. If MARKGREN had taken more breaks, he would not have gotten his machine and
25 work area cleaned sufficiently before production resumed. Another option, which Bertelsen
26 ignored, was to allow MARKGREN to wear the lighter PPG which he'd worn prior to 2017
27 while cleaning his machine and work area. Munson also knew the heavier, non-breathable safety
28 gear was not good for MARKGREN'S heart and would occasionally help him clean his area;

1 however, she did not do so daily. Nor did she speak with Bertelsen or Human Resources
 2 regarding what other accommodations SAPUTO could have made available to MARKGREN to
 3 address MARKGREN'S heart condition/disability while MARKGREN was wearing the PPG
 4 and/or the temperature was extremely high in the plant.

5 14. Beginning approximately six months prior to his back surgery in November 2018,
 6 until the time MARKGREN went on family leave for the surgery, MARKGREN asked Bertelsen
 7 to change the CIP pan under the tower which was part of the system to wash out the tower. It
 8 was one large heavy pan which was difficult for any person to maneuver by themselves but was
 9 especially difficult for MARKGREN with his back disability and sciatica. Despite his many
 10 requests, Bertelsen never changed the pan before MARKGREN went on leave or while he was
 11 out on leave. When MARKGREN returned from leave in 2019, the larger, heavy pan was still
 12 there. MARKGREN spoke with Bertelsen who said they'd have to begin at square one to figure
 13 out what to do. MARKGREN objected and immediately spoke with the then Plant Manager,
 14 Cesar Compean ("Compean"). Within two weeks the one single pan was replaced with two
 15 lighter pans which worked quite well. Given the ease with which the pans were changed,
 16 MARKGREN did not understand why Bertelsen had not changed the pans prior to his surgery.

17 15. In July 2018, MARKGREN went to the emergency room complaining of
 18 dizziness, being clammy, sweaty and weak. The temperature in the plant was 107 degrees that
 19 day with no air conditioning. He went out on a family medical leave starting on or about August
 20 2, 2018 because his cardiologist enrolled him in a specialized cardiac program that lasted for
 21 approximately two months. In mid-November 2018, MARKGREN underwent major back
 22 surgery for anterior and posterior lumbar fusion with decompression and laminectomy. In
 23 December 2018, the doctors found an aortoiliac aneurysm. He returned to work in
 24 approximately April-May 2019.

25 16. At all times, MARKGREN provided the requested medical and leave information
 26 and releases to return to work to Human Resources including but not limited to Joetta Nyhus
 27 ("Nyhus"), Sorey or Julia Schurman ("Schurman"). Management, including his immediate
 28 supervisor Munson, Bertelsen as the Health and Safety Specialist, Jim Burdick ("Burdick"),

1 Production Supervisor and his former manager, Gary Mathison (“Mathison”), were aware of and
2 knew about MARKGREN’S heart and back disabilities as well as his depression. They also
3 knew that he’d requested reasonable accommodations and took time off for family/medical
4 leaves of absences. MARKGREN’S manager in December 2019, David Miller (“Miller”), also
5 knew of MARKGREN’S disabilities, requested accommodations and family leaves of absences.
6 They all also knew that MARKGREN continued to take prescribed medications for his heart
7 condition, high blood pressure and depression. Nyhus estimated that MARKGREN’S medical
8 file was approximately 4 inches thick. Suddenly, that file is missing.

9 17. From approximately mid-2017 until he was wrongfully terminated, MARKGREN
10 was harassed by three much younger employees at work Anthony Selkow (“Selkow”), Matt
11 Olson (“Olson”) and/or Dylan Skow (“Skow”). Each were in their late twenties to early thirties.
12 The harassment occurred anywhere from twice a month to weekly when MARKGREN would
13 return to work, whether after his regular days off, vacation or his family leaves of absence. They
14 harassed him by messing with his PPG or near the end of his employment, by filling his locker
15 with hangers. His PPG was hung on a rack in the make room and had his name on each piece.
16 Most of the time some of his PPG would be missing whether it was his face shield, protective
17 coat, pants or gloves. At other times, his lock out tags, again with his name on them, would be
18 missing. One time, MARKGREN had bolted his lock out tags so no-one could take them, yet the
19 employees cut through the bolt to steal the tags. With any of these items missing, MARKGREN
20 could not fully perform the duties and responsibilities of his job until they were replaced. The
21 tags were especially important for his safety on the job. Without them, MARKGREN could not
22 tag out of a cheese production machine after it plugged up or when he routinely cleaned the
23 machine on each shift which meant the augers or blowers could restart while he was removing
24 the plugged cheese. On at least two other occasions in later 2019, MARKGREN found his
25 locker full of hangers. The second time they were so entangled that MARKGREN could not
26 open the locker door.

27 18. MARKGREN informed Munson as his supervisor each time his gear, tags or
28 locker were missing or tampered with. MARKGREN also told Munson that he suspected the

1 three younger employees, Selkow, Olson and Skow, of taking his belongings or putting the
2 hangers in his locker. Munson always told MARKGREN she'd look into it or pass it on to
3 Human Resources. The last hanger incident occurred in either late November or early December
4 2019. When MARKGREN reported the harassment to Munson, especially as time progressed
5 and the harassment was not abating, he told her that it was getting to him, he was becoming
6 frustrated because it wasn't happening to anyone else and he didn't understand why it kept
7 happening. He also told her it was bothering him so much that it was increasing his anxiety
8 levels and negatively affecting his heart. He implored Munson to end the harassment because it
9 was not good for his health. Munson repeatedly assured MARKGREN that she'd look into the
10 harassment.

11 19. MARKGREN never believed that either Munson or Human Resources
12 investigated his harassment complaints because no-one ever got back to him with any results of
13 any investigation and the harassment continued. The only thing MARKGREN witnessed was
14 Munson telling the shift employees that the taking of protective gear or lock out tags was
15 unacceptable. She only did this about 3-4 times over the two a half year period the harassment
16 was happening. The announcements had absolutely no impact as the harassment continued.

17 20. On December 23, 2019, MARKGREN cleaned out cheese from the tower from
18 one of the machines in the lower make room. He used the same procedure he'd been taught by
19 his earlier supervisor, Dual Spurlock. It was also the same procedure he'd been performing
20 through-out his 32 years of employment. Of note, no safety protocol or lock out instruction had
21 been written up regarding the door leading to the tower as it rarely ever got plugged. It was also
22 nowhere near the augers as they were in separate shoots and the doors to them were closed. To
23 clean the shoot, an operator's arms and hands were never physically in the shoots. Bertelsen and
24 Munson confirmed that no safety protocol or lock out instruction had been written up about the
25 door leading to the tower. Despite this, SAPUTO accused MARKGREN of violating its alleged
26 lockout-tagout policy and used it as one of the reasons to terminate MARKGREN days later.

27 21. On December 28, 2019, the tower in the filler machine plugged up on the shift
28 before MARKGREN came in. When he arrived, MARKGREN assisted the previous operator in

1 cleaning out the cheese. When that operator's shift was finished, MARKGREN continued
2 cleaning the machine by himself. Skow came down to investigate what was going on but in
3 violation of company protocol, turned and walked away without assisting MARKGREN with
4 unplugging the machine. MARKGREN, by himself, shut down the machine, locked out the
5 augers and unplugged the machine.

6 22. After the machine was cleared, MARKGREN started cleaning up the cheese that
7 had fallen to the floor. He turned on one hose on the south wall of the make room for water then
8 went to turn on a second hose. When he returned to the machine, the first hose had been turned
9 off. Selkow was standing there with pliers in his pocket, which were required to turn the hose
10 off. MARKGREN asked Selkow if he'd turned off the first hose. Selkow denied he'd turned the
11 water off. Because no-one else was present and the pliers to turn the hose off was in Selkow's
12 pocket, MARKGREN asked him a second time why he'd turned the water off. Selkow
13 continued to deny that he turned the water off. While MARKGREN was speaking with Selkow,
14 Skow walked up and began raising his voice and yelling at MARKGREN to return to the other
15 end of the building. MARKGREN asked Skow why he was so angry towards him but Skow
16 only continued yelling. MARKGREN turned and walked to the other end of the building.
17 SKOW continued yelling even as MARKGREN walked away.

18 23. Because Skow had not helped him clean the machine and the subsequent
19 interchange with Selkow and Skow was intense, mean spirited and malicious and because
20 MARKGREN believed they'd been harassing him for years, MARKGREN became extremely
21 upset, started shaking and his heart started racing. He began sweating and was getting clammy.
22 He called Munson and told her that Selkow and Skow were purposefully trying to upset him and
23 that he needed to leave because his heart was racing, he was sweating, he didn't feel right and it
24 was not safe for him to stay at work because of his heart. He was extremely afraid he'd have
25 another heart attack at work. He was beginning to panic. He also told Munson that he'd return
26 to work the next day but had to leave then. Munson told him to "go". Munson herself noted
27 MARKGREN was physically shaking. MARKGREN turned and walked away, avoiding Selkow
28 who was carrying a cheese form.

1 24. Of note, the walkway between machines was extremely narrow. Prior to his
2 physically leaving the plant, Munson found MARKGREN and asked him if he'd bumped into
3 Skow as he was leaving. MARKGREN said no, not to his knowledge. He also explained that
4 he'd turned side-ways to avoid Selkow who was carrying a form and the work area was very
5 narrow. To his knowledge, he did not touch Skow while he was turning to avoid Selkow.
6 Munson telephoned MARKGREN later in the day telling him not to return to work the next day
7 because Human Resources was looking into what had happened.

8 25. Later that same day, someone from Human Resources also called MARKGREN
9 and simply asked him what had happened. MARKGREN relayed that the machine had plugged
10 up, he'd cleaned it out, started cleaning up the excess cheese that had fallen to the floor including
11 by starting the first hose, going to start the second hose and returning to find the first hose turned
12 off. He then explained the exchange between himself, Selkow and Skow which caused his heart
13 to race, he was getting sweaty and clammy and had to leave because he was extremely anxious
14 that he'd suffer another heart attack. He also told her that Munson had approved his leaving for
15 the day under the circumstances. During this conversation, MARKGREN was not asked any
16 questions about whether or not he'd bumped into Skow as he was leaving.

17 26. On December 29, 2019, Schurman also telephoned MARKGREN and asked him
18 what had happened the day before. MARKGREN told her the tower had plugged, Selkow had
19 shut off the hose and Skow had been yelling at him. MARKGREN also told her that he'd had to
20 leave because the harassment was adversely affecting his heart causing him to not feel well, he'd
21 been sweating profusely and his heart was racing. He told her that it was not good for him to be
22 in the continuing work environment with his heart condition and Munson approved him leaving
23 under the circumstances. Again, MARKGREN was not asked any questions about whether or
24 not he'd bumped into Skow as he was leaving much less about any of the other false allegations
25 Skow filed against him.

26 27. On December 31, 2019, SAPUTO wrongfully terminated MARKGREN for false
27 and illegitimate reasons. SAPUTO alleges that it terminated MARKGREN for violating safety
28

1 protocol on December 23, 2019 and for allegedly initiating a verbal and physical altercation with
 2 Selkow and Skow on December 28, 2019. MARKGREN denies both of these allegations.
 3 Further, MARKGREN was never told that Skow had complained about what had happened
 4 including that he'd intentionally bumped into him as he was leaving causing Skow to fall. As
 5 such, MARKGREN was never given a full opportunity to deny that he had or that if he had, it
 6 was an accident because he was panicking because of his heart, in a hurry to leave and the
 7 walkway was extremely narrow. Indeed, SAPUTO'S alleged investigation into both incidents
 8 was false and facile, blatantly failing to provide MARKGREN with the details of what Selkow
 9 and Skow alleged so he could tell his version of what had happened. SAPUTO also ignored
 10 statements and/or witnesses who could corroborate MARKGREN'S statements of what
 11 happened including that there was no physical contact between MARKGREN and Skow as
 12 MARKGREN was leaving. Even Munson wrote of the incident that "it looked like a show of
 13 being mad", referring to Skow.

14 28. The four individuals who made the decision to terminate MARKGREN,
 15 Schurman, Jennifer Ellefson ("Ellefson"), Lisa Housner ("Housner") and Miller, were anywhere
 16 from 8 to 14 years younger than MARKGREN. MARKGREN was also replaced by a twenty-
 17 something inexperienced female and later by a thirty-four-year-old male. Selkow, Skow and
 18 Olson, who were much younger than MARKGREN, remained employed despite their repeated
 19 harassment of MARKGREN for two and a half years including on December 28, 2019.

20 29. STROHSCHEIN began his employment in April 1984 as a machine operator at
 21 Twin Town Cheese Factory which later became SAPUTO. He was promoted to a supervisory
 22 position in 2008. In 2017, he was transferred from the old to the new plant which became
 23 operational in late 2017. In 2017, while constructing the plant, STROHSCHEIN worked closely
 24 with ALPMA (Alpenland Maschinenbau GmbH), the company who built and installed the
 25 cheese making machinery. Thus, he gained an integral knowledge of how the machines operated
 26 which allowed him to later assist maintenance in repairing the machines. STROHSCHEIN'S
 27 date of birth is June 25, 1965. He was employed by SAPUTO and its predecessors for 36 years.
 28

1 30. Beginning in 2017, STROHSCHEIN was the Blue Cheese Production Supervisor
 2 on the PM shift in the new plant. The Production Supervisor position at SAPUTO, especially in
 3 the new plant, was complex. Eight operators reported to the supervisor and together, they ran 13
 4 different large, complex and automated machines spread out over approximately 150,000 square
 5 feet. Besides managing the employees and the machines, the supervisor also monitored 21 aging
 6 cells for proper temperature and conditions. He'd also operate a machine if need be and
 7 coordinated any repairs with maintenance.

8 31. Once promoted, STROHSCHEIN received positive feedback about his
 9 performance including in written reviews by his previous manager, Tom Ingham ("Ingham").
 10 As he progressed as a supervisor, so did his opportunities including training staff, reducing waste
 11 and traveling to Big Stone to learn more about the aging and packaging processes for the cheese
 12 made in Almena.

13 32. On November 11, 2019, STROHSCHEIN attended a meeting between himself,
 14 Jerrold Featherly ("Featherly"), the new Production Manager, and Miller, the new Plant
 15 Manager. Featherly and Miller were in their early to mid-forties so were several years younger
 16 than STROHSCHEIN. During this meeting, Miller alleged STROHSCHEIN had not properly
 17 performed his job on four instances. STROHSCHEIN refuted the allegations verbally while also
 18 admitting that on one occasion identified he should have completed a Product Incident Report
 19 ("PIR") form even though he had informed maintenance of the problem. When leaving,
 20 Featherly told STROHSCHEIN he didn't feel good about the discussion. Neither did
 21 STROHSCHEIN given Miller had only recently become the Plant Manager, he rarely walked
 22 through the plant especially on the night shift when STROHSCHEIN worked and the interactions
 23 between Miller and STROHSCHEIN had been few and short. Thus, STROHSCHEIN felt that
 24 Miller did not have an understanding of his performance. Of import, STROHSCHEIN was never
 25 given a copy of this alleged "Record of Discussion" and therefore, was never able to refute the
 26 allegations in writing.

27 33. In approximately early 2020, Featherly, during a supervisors meeting, instructed
 28 the supervisors not to go into and change the register, the key to the computerized processing

1 system. He then looked directly at STROHSCHEIN and said to all present that STROHSCHEIN
2 knows how to fix the register. Indeed, STROHSCHEIN had been doing so since 2019. Based
3 on Featherly's comment, STROHSCHEIN understood that Featherly was giving him the go
4 ahead to still go in and change the register. On two occasions after that meeting, Featherly
5 himself was on the production floor and instructed STROHSCHEIN to change the register
6 because it was out of sync. In response, STROHSCHEIN went into the register and changed the
7 value or took out an incorrect value so the processing equipment would run again. Thereafter, if
8 needed, STROHSCHEIN would change the register, fixing the problem so the equipment ran
9 fine. Of note, Susan Bever ("Bever"), the Day Shift Production Supervisor also continued to
10 change the register as needed on her shift. Each supervisor had their own log in identification
11 and therefore, SAPUTO would have known when any of the supervisors went into and changed
12 the register. Although these identifications were initially taken back from the supervisors,
13 Featherly returned STROHSCHEIN'S identifications to him, again leading him to believe he
14 could change the register. On information and belief, Bever's log in identification was also
15 returned to her.

16 34. On March 6, 2020, the Coagulator, "Coag" for short, went down on the night
17 shift. The issue was with the plate. The Coag was approximately 300 feet long and was the
18 largest such machine in the nation. Because of its complexity, the Coag would often just stop
19 working. STROHSCHEIN and the operator, Tom Lefstad ("Lefstad"), worked together to fix
20 the issue by raising and lowering the plate for not more than five minutes hoping the problem
21 would be resolved as they'd successfully done in the past. They did *not* move the plate in and
22 out. Because the issue was not resolved, STROHSCHEIN immediately notified Dan Lehman
23 ("Lehman") in maintenance. Lehman arrived with another maintenance employee, Dan Capuzzi
24 ("Capuzzi"). For the next 40-45 minutes, Lehman, with the assistance of STROHSCHEIN, tried
25 to fix the machine while Capuzzi primarily watched. The machine locked up after Lehman had
26 instructed STROHSCHEIN to remove the plate. Lehman called Cybertrol, the tech company
27 who assisted in resolving system problems. STROHSCHEIN texted Featherly who arrived
28 approximately 30 minutes later. Featherly took over fixing the Coag machine with maintenance

1 and STROHSCHEIN left the machine to work elsewhere in the plant. The Coag machine began
 2 working around 10:00 p.m. and Featherly left the plant. The Coag went down again about 30
 3 minutes later. STROHSCHEIN again notified FEATHERLY who returned to the plant and
 4 resumed working on the machine with maintenance. The Coag started operating around
 5 approximately 7:00 a.m., after STROHSCHEIN'S shift ended and he'd left the plant.

6 35. On March 7, 2020, STROHSCHEIN arrived at 4:00 p.m., the start of his shift.
 7 The Coag was working but STROHSCHEIN and his crew had to clean up the bad cheese from
 8 the night before. Then the turner and filler machines had minor problems. Maintenance was
 9 called and the machines were repaired. Processing was approximately 30 minutes behind
 10 schedule. STROHSCHEIN kept Miller apprised via text. At 4:00 a.m., when the shift ended,
 11 STROHSCHEIN informed Bever, the female supervisor on the day shift who came in to relieve
 12 STROHSCHEIN, that the turner machine had lost about 30 minutes earlier in the shift but the
 13 time had been made up. As they were talking, a young female operator, Kiaya Carranza
 14 ("Carranza"), informed STROHSCHEIN and Bever that the 414 tunnel which she operated, was
 15 not turning. STROHSCHEIN and Bever together went to the control screen and saw the tunnel
 16 had not turned for about 290 minutes or almost 5 hours. This meant that Carranza had not been
 17 properly monitoring the control screen as she should have noticed hours earlier that the tunnel
 18 had not been turning. STROHSCHEIN recommended Bever contact maintenance which she did.
 19 Of note, the 414 tunnel going down was unrelated to the Coag machine going down on March 6,
 20 2020.

21 36. On March 8, 2020, when STROHSCHEIN arrived on his shift, production was
 22 approximately 3-4 hours behind. STROHSCHEIN informed Featherly of this and expressed
 23 concern that the Coag might go down again. STROHSCHEIN then requested he be able to shut
 24 the production line down here and there so the Coag would not go down. Featherly approved
 25 STROHSCHEIN shutting down early if they ran into more machine problems. Because there
 26 were no machine problems that shift, STROHSCHEIN kept everything running. The following
 27 morning, STROHSCHEIN told Dale Buck ("Buck"), the day supervisor who relieved
 28 STROHSCHEIN that day, that Featherly had approved shutting down early if they began to run

1 into problems. Buck also kept the line running and did not shut down early. On March 11th,
 2 when STROHSCHEIN returned to work after his days off, Featherly, in opposite of what he'd
 3 told STROHSCHEIN on March 8th, told STROHSCHEIN he should've shut down early on the
 4 8th so the cheese making could start up on time the next shift.

5 37. On March 8, 2020, during the shift, a female employee, Cassandra Miller ("C.
 6 Miller"), informed STROHSCHEIN that she'd received a minor burn. STROHSCHEIN
 7 inspected the burn and offered first aid which C. Miller refused. STROHSCHEIN instructed C.
 8 Miller to meet him at the end of the shift to complete the requisite safety forms.
 9 STROHSCHEIN waited for C. Miller at the end of the shift but she did not show up.

10 38. STROHSCHEIN did not work on March 9th or 10th. On March 11, 2020,
 11 STROHSCHEIN met with Schurman and Featherly. The three discussed the events between
 12 March 6-8, 2021. STROHSCHEIN reminded them that it was Lehman who'd made the decision
 13 to manually retract a plate on the Coag machine, not he. He also told them that he told Lehman
 14 he didn't think it was a good idea to move the plate because when you manually move something
 15 the register would be off. Schurman told STROHSCHEIN that "he let it happen".
 16 STROHSCHEIN disagreed because he had no management authority over the maintenance
 17 employees and once Lehman arrived at the Coag machine on the 6th, he'd followed Lehman's.
 18 Furthermore, Featherly had always told him that once a maintenance issue was turned over to
 19 maintenance, it was their responsibility, not production's. Schurman and Featherly also threw
 20 allegations at STROHSCHEIN of which he knew nothing, including but not limited to, that the
 21 motor on the stacking machine had gone down and that he he'd been freely changing the register
 22 on March 6th while maintenance was trying to fix the Coag. STROHSCHEIN told them that he
 23 knew nothing about the motor on the stacking machine and that he never changed the register on
 24 the 6th. It was apparent to STROHSCHEIN that management would make him take the fall for
 25 the events between March 6-8, 2021. STROHSCHEIN maintains that he followed company
 26 protocol and trainings at all times between March 6-8, 2021.

27 39. STROHSCHEIN was then placed on administrative leave and terminated on
 28 March 16, 2020. At the time, he was not given any reasons as to why he was terminated.

1 Subsequently, SAPUTO contends STROHSCHEIN was terminated for failing to follow
2 company policies and rules between March 6-8, 2020.

3 40. STROHSCHEIN was 54 almost 55 years of age at the time. The decision-
4 makers, Schurman, Ellefson (HR Generalist under Schurman in plant) and Featherly were 42
5 years of age and Miller was 46-47 years of age. Lehman and Capuzzi, both maintenance
6 employee who worked on the Coag machine on March 6, 2021, were in their thirties and they
7 remained employed. Of note, SAPUTO “lost” the original statement written by Lehman wherein
8 he accepted responsibility for moving the plate on the Coag machine. Carranza, a younger
9 female operator, also remained employed though she didn’t check the monitor for her machine
10 for almost 5 hours resulting in it going down.

11 41. STROHSCHEIN was replaced by a younger male employee who was either 36,
12 39 or 42. Bever, a female supervisor, failed to complete the requisite PIR form in November
13 2019 at the time the 701 washer wasn’t up to the required temperature and she was the
14 supervisor on shift when it happened. She also continued to change the register after being
15 instructed not to do so which were similar accusations as those which SAPUTO leveled against
16 STROHSCHEIN. Yet, Bever remains employed.

17 42. On information and belief, SAPUTO has a pattern and practice of terminating
18 other older employees without cause including but not limited to Gordon Garske (“Garske”),
19 MARKGREN and STROHSCHEIN.

20 43. On information and belief, SAPUTO also has a pattern and practice of treating
21 younger and female employees more favorably than it did older, male employees including
22 MARKGREN and STROHSCHEIN.

23 44. Of great concern also, SAPUTO did not follow its progressive disciplinary system
24 with either MARKGREN or STROHSCHEIN before terminating them which was its pattern and
25 practice to do. This was especially important given each had worked for SAPUTO for more than
26 30 years.

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FIRST CAUSE OF ACTION

DISCRIMINATION BASED ON AGE

the violation of the

Age Discrimination In Employment Act as set forth in 29 U.S.C. §§ 621-634

PLAINTIFFS MARKGREN and STROHSCHEIN

AGAINST DEFENDANT SAPUTO

45. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth in paragraphs 1 through 44, inclusive, of this Complaint.

46. Defendant SAPUTO discriminated against MARKGREN and STROHSCHEIN on the basis of their age in violation of the Age Discrimination in Employment Act (“ADEA”) when SAPUTO, through its Human Resources and Management personnel, including Schurman, Ellefson, Housner, Featherly and Miller, wrongfully terminated MARKGREN and STROHSCHEIN without first following the company’s progressive disciplinary policies and procedures and by terminating them both for false reasons.

47. MARKGREN, who'd been employed since 1987, was terminated without any recent and previous warnings. STROHSCHEIN, who'd been employed since 1984 and hadn't received any counseling for years, disagreed with the accusations verbally made against him in November 2019 and refuted the majority of them. Neither of them received any type of counseling prior to their terminations based on the events for which SAPUTO alleges they were terminated. Both MARKGREN and STROHSCHEIN had each been employed for over 30 years and had been performing the duties and responsibilities of each of their positions.

48. Furthermore, both MARKGREN and STROHSCHEIN disagreed with the reasons they were allegedly terminated. Neither were given a full and complete opportunity to refute the allegations against them and SAPUTO'S investigations into the events allegedly leading to their respective terminations were false and facile. SAPUTO did not talk to witnesses who would corroborate MARKGREN'S or STROHSCHEIN'S versions of what had happened and ignored testimony by witnesses who refuted the false accusations against them.

1 49. MARKGREN did not violate any lock out procedure on December 23, 2019
 2 because there was none as agreed to by his supervisor, Munson. He also did not initiate an
 3 altercation between himself and Skow or Selkow on December 28, 2019 as confirmed by
 4 Munson and another employee present but whom SAPUTO never interviewed, Doug
 5 Strohschein.

6 50. STROHSCHEIN disagreed with the four allegations against him during his
 7 meeting with Miller and Featherly in November 2019 and verbally informed them as to why the
 8 majority of their representations were false. He did admit that in response to one incident, he
 9 should have completed the PIR form though he'd gotten maintenance to fix the machine
 10 problem. STROHSCHEIN was never given a copy of the Record of Discussion containing the
 11 incidents and was never given an opportunity to adequately refute the false allegations contained
 12 therein in writing. STROHSCHEIN also disagreed that he'd violated company policy and
 13 procedure between March 6-8, 2020. Ironically, SAPUTO "lost" the one corroborating witness
 14 statement given to it by Lehman, the younger maintenance employee, who'd initially written that
 15 he'd made the decision to remove the plate from the Coag machine, not STROHSCHEIN.

16 51. Furthermore, both MARKGREN and STROHSCHEIN were replaced with an
 17 individual who was substantially younger than themselves. MARKGREN'S immediate
 18 replacement was a female approximately in her twenties. STROHSCHEIN was replaced by a
 19 male employee who was between 36 and 42 years of age.

20 52. Also, the decision-makers who terminated both were anywhere from 8-14 years
 21 younger than MARKGREN and STROHSCHEIN. MARKGREN who was 55 years old when
 22 he was wrongfully terminated and STROHSCHEIN was 54 almost 55.

23 53. SAPUTO also retained other employees who committed the same or more
 24 egregious acts than either MARKGREN and/or STROHSCHEIN including but not limited to
 25 Selkow, Skow, Olson, Lehman, Capuzzi, Carranza, Matt Holten ("Holten"), Jeremy
 26 Raffesberger ("Raffesberger"), Bever and others. MARKGREN and STROHSCHEIN believe
 27 there are other younger employees who SAPUTO has retained though they committed the same
 28 or more egregious acts than they.

1 54. SAPUTO is an entity subject to suit under the ADEA in that it is an employer
2 who regularly employs 20 or more persons. It engaged in a pattern and practice of
3 discriminating against employees, including MARKGREN and STROHSCHEIN, on the basis of
4 their protected categories, including their age, in violation of the ADEA by engaging in the
5 course of conduct set forth above. Examples of other older employees who were terminated or
6 who were constructively terminated from their employment, on information and belief, include
7 Gordon Garske, who was 60 years old at the time, and Nyhus, SAPUTO'S former Human
8 Resources Manager.

9 55. As a proximate result of SAPUTO'S conduct, MARKGREN and
10 STROHSCHEIN have suffered and will continue to suffer substantial losses incurred in earnings
11 and other employment benefits they would have received had SAPUTO not taken such adverse
12 employment action against them. SAPUTO willfully violated the ADEA and showed a reckless
13 disregard towards MARKGREN and STROHSCHEIN because of their ages. As such, each was
14 damaged in an amount to be ascertained at trial, including, but not limited to compensatory
15 damages. They are also entitled to attorneys' fees and costs. All of which will be determined
16 according to proof, and as provided by 29 U.S.C. §§ 216(b) and 626(b).

17 56. Said acts were committed maliciously, fraudulently and oppressively, with the
18 wrongful intent of injuring MARKGREN and STROHSCHEIN and with an improper evil
19 motive amounting to malice and therefore, each is entitled to liquidated damages commensurate
20 with Defendant's wealth, and as otherwise set forth under the ADEA which incorporates
21 damages from the Fair Labor Standards Act 29 U.S.C. §201; 29 U.S.C. §216.

WHEREFORE, MARKGREN and STROHSCHEN request relief as hereinafter provided.

SECOND CAUSE OF ACTION

HARASSMENT BASED ON AGE

IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT

PLAINTIFF MARKGREN

AGAINST DEFENDANT SAPUTO

27 57. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth
28 in paragraphs 1 through 56, inclusive, of this Complaint.

1 58. During the last two and one-half years MARKGREN was employed by SAPUTO,
 2 it engaged in a continued course of conduct with the intent of harassing MARKGREN on the
 3 basis of his age. SAPUTO did so by ignoring MARKGREN'S weekly or bi-weekly complaints
 4 to his supervisor, Munson, that three much younger employees were repeatedly taking,
 5 discarding and/or damaging his tag out cards or PPG including his face shield, protective coat,
 6 pants and gloves. On one occasion, these younger employees even cut through the bolt
 7 MARKGREN had brought in to secure his gear. In later 2019, they also stuffed hangers in
 8 MARKGREN'S locker on at least two occasions. The second time he couldn't open his locker
 9 because the hangers were so entangled.

10 59. Each time MARKGREN'S gear or tags were missing or he found hangers in his
 11 locker, MARKGREN found Munson as his supervisor to show her what had happened and
 12 replace his gear. The time it took to find Munson, show her what happened and then have his
 13 gear replaced, delayed the start of MARKGREN'S shift because he could not work without his
 14 gear or lock-out tags given they were essential for his safety on the job. MARKGREN
 15 repeatedly told Munson that he believed that Selkow, Olson and Skow were the individuals
 16 responsible for this harassment because the harassment didn't start until after they were
 17 employed and only happened when they were at work. He also repeatedly told Munson that the
 18 harassment was adversely affecting him emotionally and physically including that his anxiety
 19 levels were steadily increasing causing him to worry about his heart when he was at work.

20 60. SAPUTO allowed this harassment of MARKGREN to continue for two and a-half
 21 years because Munson never fully investigated who was removing or damaging MARKGREN'S
 22 PPG or lock out tags and putting hangers in his locker. Though Munson instructed the shift
 23 employees to stop doing this on 3-4 occasions during this two and a-half year period, they never
 24 did. Moreover, though Munson promised MARKGREN she'd take care of the problem, on
 25 information and belief, Munson never informed Human Resources. Nor did anyone conduct a
 26 formal investigation to determine who was doing the harassment much less end it. Because
 27 Munson told MARKGREN that she would take care of things, he never himself spoke with
 28 Human Resources or filed a formal complaint.

1 61. The harassment peaked on December 28, 2019. First, Skow refused to help
 2 MARKGREN remove the cheese from his machine in violation of company policy. Second,
 3 Selkow turned the first hose off as MARKGREN was cleaning the cheese that had fallen to the
 4 floor. Third, after MARKGREN asked Selkow if he'd turned the water off, Selkow repeatedly
 5 denied it though he had the pliers in his pockets which were used to turn the hose off. Fourth, in
 6 the midst of MARKGREN'S discussion with Selkow, Skow approached and began yelling at
 7 MARKGREN until MARKGREN walked away.

8 62. Because the situation that day had escalated and because Selkow's and Skow's
 9 harassment had been continuing for over two years, MARKGREN became so upset he was
 10 getting anxious, was shaking and sweating. MARKGREN called Munson and told her he had to
 11 immediately leave because he was worried about his heart and indeed, that he might have
 12 another heart attack. Munson let him leave.

13 63. Unbeknownst to MARKGREN, Skow complained that MARKGREN had
 14 intentionally knocked him over as he was leaving. Munson herself wrote that "it looked like a
 15 show of being mad". Further, another employee was present, Doug Strohschein, who was never
 16 interviewed by SAPUTO. This is important because he would have told them that there was no
 17 bodily contact between MARKGREN and Skow as MARKGREN was leaving and if there had
 18 been, it was because the walkway was very narrow. Indeed, SAPUTO ignored the evidence
 19 showing that MARKGREN had not deliberately knocked Skow into a rack of cheese or made
 20 him fall as Skow falsely alleged. SAPUTO also ignored the on-going malicious behavior of
 21 Selkow and Skow towards MARKGREN.

22 64. SAPUTEO also condoned the harassment of MARKGREN by Selkow and Skow
 23 and Olson by ignoring the years that MARKGREN had told Munson that he was being harassed
 24 by them. Instead, they falsely terminated MARKGREN for the incident. MARKGREN believes
 25 he was terminated because of his age and disabilities.

26 65. As a proximate result of SAPUTO'S conduct, MARKGREN has and will
 27 continue to suffer damages, including, but not limited to, lost salary and benefits of employment,
 28 Further, MARKGREN was damaged in an amount to be ascertained at trial, including, but not

1 limited to compensatory damages and attorneys' fees and costs, according to proof, and as
2 provided by 29 U.S.C. §§ 216(b) and 626(b).

3 66. Said acts were committed maliciously, fraudulently and oppressively, with the
4 wrongful intent of injuring MARKGREN and with an improper and evil motive amounting to
5 malice. Therefore, MARKGREN is entitled to liquidated damages or other remedies as provided
6 under the ADEA which incorporates remedies from the Fair Labor Standards Act.

7 WHEREFORE, MARKGREN requests relief as hereinafter provided.

THIRD CAUSE OF ACTION

REVERSE GENDER DISCRIMINATION

**In Violation of Title VII
42 U.S.C. §§ 2000e et seq.**

**PLAINTIFFS MARKGREN AND STROHSCHEIN
AGAINST DEFENDANT SAPUTO**

14 67. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth in
15 paragraphs 1 through 66, inclusive, of this Complaint.

16 68. MARKGREN and STROHSCHEIN were at all times material hereto employees, as
17 defined with 42 U.S.C. § 2000e(f) under Title VII which prohibits discrimination, harassment and
18 retaliation in employment based on one's sex/gender.

19 69. Defendant SAPUTO is and was at all times material hereto an employer within the
20 meaning of 42 U.S.C § 2000e(b). As such, Defendant SATPUO is barred from discriminating in
21 any term, condition or privilege of employment including on the basis of an employee's
22 sex/gender and from retaliating against an employee on the same basis.

23 70. Defendant SAPUTO reversely discriminated against MARKGREN and
24 STROHSCHEIN on the basis of their sex/gender in violation of 42b U.S.C. § 2000e et seq. when,
25 Defendant SAPUTO failed to properly investigate the allegations made against MARKGREN and
26 STROHSCHEIN. Instead, SAPUTO conducted biased, false and facile investigations against
27 MARKGREN for the December 23, 2019 and December 29, 2019 incidents and against
28 STROHSCHEIN for the March 2020 machinery shut-downs. SAPUTO did not allow either

1 MARKGREN or STROHSCHEIN an opportunity to fully address the accusations against them or
 2 provide witnesses in their support. In this respect, Schurman and her female staff in Human
 3 Resources, Ellefson and Housner, did not perform their duties and responsibilities to the detriment
 4 of two long term male employees resulting in MARKGREN'S and STROHSCHEIN'S wrongful
 5 discriminatory terminations. Yet, all three females remained employed.

6 71. Defendant SAPUTO also discriminated against MARKGREN and
 7 STROHSCHEIN because MARKGREN and STROHSCHEIN were fully performing the duties
 8 and responsibilities of their respective positions and neither of them did the actions of which they
 9 were accused immediately prior to their terminations yet they were terminated. Indeed, the
 10 allegations against MARKGREN by Skow and Selkow were false and malicious and SAPUTO
 11 knew this given MARKGREN had told Munson for 2.5 years that he believed they were the
 12 employees harassing him and Munson herself did not support Skow's complaints against
 13 MARKGREN. Likewise, the allegations against STROHSCHEIN were exaggerated with
 14 SAPUTO losing the very statement that Lehman had written wherein he stated that it was his
 15 decision to remove the plate from the Coag machine and not STROHSCHEIN. In both instances,
 16 SAPUTO failed to speak with witnesses who would have corroborated MARKGREN'S and
 17 STROHSCHEIN'S version of what happened. As such, SAPUTO based its decision to terminate
 18 MARKGREN and STROHSCHEIN on false accusations which, if it had properly investigated the
 19 allegations, should have known were false or were not sufficiently severe to warrant their
 20 immediate terminations.

21 72. Defendant SAPUTO also discriminated against MARKGREN and
 22 STROHSCHEIN by not terminating other female employees for similar or more egregious
 23 conduct. Indeed, Munson was not terminated despite the fact that for over two years she did not
 24 investigate MARKGREN'S claims of harassment by Selkow, Olson and Skow. Instead, she
 25 allowed the harassment of MARKGREN to continue unfettered. She also failed to work with
 26 MARKGREN to find reasonable accommodations for him on the job because of his disabilities or
 27 stand up for him regarding the December 28, 2019 incident despite the fact that she was present
 28 when MARKGREN walked off the floor.

1 73. Likewise, Bever, who was the day-shift production supervisor in the new plant and
 2 who was STROHSCHEIN'S counter-part, had (a) failed to complete a PIR form in November
 3 2019 in compliance with company policy requiring she do so because she was the supervisor on
 4 duty at the time the 701 washer wasn't up to the required temperature and she could describe what
 5 was happening; and (b) routinely changed the register after being instructed not to do so. Of
 6 important, SAPUTO would have had a record of Bever changing the register because she had her
 7 own log-in codes.

8 74. Thus, SAPUTO discriminated against MARKGREN and STROHSCHEIN in a
 9 reverse manner based on their sex/gender. SAPUTO also replaced MARKGREN with a young
 10 female who had no experience and who he himself was training in 2019. So also, the female
 11 employees in Human Resources all remained employed despite their inept and biased
 12 investigations into the incidents leading to MARKGREN'S and STROHSCHEIN'S terminations.

13 75. On information and belief, SAPUTO has engaged in a pattern and practice of
 14 discriminating against and harassing employees, including MARKGREN and STROHSCHEIN,
 15 on the basis of their protected categories, including reversely based on their sex/gender, in
 16 violation of Title VII by engaging in the course of conduct set forth above. Defendant SAPUTO
 17 has a pattern and practice of protecting female employees in the workplace to a greater extent than
 18 it protects male employees in the workplace, including from false allegations. Examples include
 19 SAPUTO protecting Bever, Bertelsen, Munson, Schurman, Ellefson and Housner.

20 76. As a proximate result of SAPUTO'S conduct, MARKGREN and STROHSCHEIN
 21 have suffered, and will continue to suffer, substantial losses incurred in earnings and other
 22 employment benefits each would have received had Defendant SAPUTO not taken such adverse
 23 employment action against them.

24 77. Further, and as a proximate result of Defendant SAPUTO'S conduct, MARKGREN
 25 and STROHSCHEIN have suffered, and will continue to suffer, emotional distress damages
 26 including anxiety, depression, much lowered self-esteem, humiliation, physical weight gain,
 27 sleeplessness and other emotional distress in an amount according to proof. MARKGREN'S
 28

1 sudden, wrongful and humiliating termination has also adversely affected his disabilities including
2 his heart condition, high blood pressure and severe depression.

3 78. MARKGREN and STROHSCHEIN are informed and believe that Defendant
4 SAPUTO'S actions, as set forth above, were motivated by animus towards MARKGREN and
5 STROHSCHEIN based on their sex/gender. Said acts were committed maliciously, fraudulently
6 and oppressively, with the wrongful intention of injuring MARKGREN and STROHSCHEIN, and
7 with an improper and evil motive amounting to malice. Said acts were carried out by managerial
8 employees acting within the course and scope of their employment with Defendant SAPUTO and
9 with the intent to injure MARKGREN and STROHSCHEIN. MARKGREN and STROHSCHEIN
10 are therefore entitled to recover compensatory and punitive damages commensurate with
11 Defendant SAPUTO'S wealth, and as set forth under 42 U.S.C. § 1981a.

12 79. As a result of Defendant SAPUTO'S discriminatory acts as alleged herein,
13 including violation of Title VII, MARKGREN and STROHSCHEIN were damaged in an amount
14 to be proven at trial, including, but not limited to, compensatory, general and punitive damages,
15 attorneys' fees and costs, according to proof and as provided by 42 U.S.C. § 1981(a)(2).

WHEREFORE, MARKGREN and STROHSCHEN request relief as hereinafter provided.

FOURTH CAUSE OF ACTION

**FAILURE TO REASONABLY ACCOMMODATE A DISABILITY AND
PARTICIPATE IN THE INTER-ACTIVE PROCESS**
In Violation of the Americans with Disability Act

PLAINTIFF MARKGREN

AGAINST DEFENDANT SAPUTO

23 80. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth
24 in paragraphs 1 through 79, inclusive, of this Complaint.

25 81. At all times herein mentioned, the American with Disabilities Act 42 USC
26 §12101 *et seq* was in full force and effect and binding on SAPUTO. The ADA requires
27 SAPUTO, as MARKGREN'S employer, to reasonably accommodate an employee with a known
28 physical or mental disability. The ADA also required SAPUTO, as the employer, to engage in

1 the inter-active process with MARKGREN to determine what reasonable accommodations were
2 needed by him and implement them accordingly. The obligation to accommodate an employee's
3 disability is a continuing duty that is not exhausted by one effort. Within the time provided by
4 law, MARKGREN filed a complaint with the EEOC in full compliance this with section and
5 received a right to sue letter.

6 82. For purposes of the ADA, conduct resulting from a disability is considered to be
7 part of the disability, rather than a separate basis for termination. The link between an
8 employee's disability and his/her termination is particularly strong where it is the employer's
9 failure to reasonably accommodate a known disability that leads to discharge for performance
10 inadequacies resulting from that disability.

11 83. From 2012 forward, MARKGREN suffered from several disabilities while he was
12 employed. In 2012, he developed a serious heart condition which continued through-out his
13 employment. He went out for heart surgery in May 2012 during which, two stents were placed
14 in his heart. He returned to work in approximately June 2012. In July 2013, he fainted at work
15 due to an extremely high working temperature of over 100 degrees Fahrenheit and was having
16 chest pains. He was transported by EMS to the hospital. He was diagnosed with coronary artery
17 disease, congested heart failure, hypertension and severe depression. He went out on short term
18 disability/family leave. In August 2013, his physician restricted him to working indoors at less
19 than 100 degree Fahrenheit temperature. From then forward, MARKGREN continued to have a
20 serious heart condition which was exacerbated especially during the summers by working in a
21 non-air-conditioned plant that regularly had temperatures exceeding 100 degrees Fahrenheit. It
22 was also exacerbated by the 2.5 years of harassment he endured from Selkow, Skow and Olson
23 when they'd repeatedly remove his personal gear or tags. He also continued to suffer from
24 severe depression.

25 84. In 2014, MARKGREN suffered a back strain and was diagnosed with sciatica
26 causing him extreme pain while at work. In December 2016, he underwent bariatric surgery and
27 returned to work in early 2017.

28

1 85. In July 2018, MARKGREN went to the emergency room complaining of
 2 dizziness, being clammy, sweaty and weak related to his heart. He went out on a family leave in
 3 August 2018 to attend a specialized cardiac program.

4 86. In mid-November 2018, MARKGREN underwent major back surgery for anterior
 5 and posterior lumbar fusion with decompression and laminectomy. In December 2018, the
 6 doctors found an aortoiliac aneurysm. He returned to work in approximately April-May 2019.

7 87. At all times, MARKGREN provided the requested medical and leave information
 8 regarding his disabilities and accommodations needed at work. As such, SAPUTO, including his
 9 supervisors, managers and human resources representatives, knew of MARKGREN'S
 10 disabilities and requested accommodations in the workplace. Nyhus estimated that
 11 MARKGREN'S medical file at SAPUTO was at least 4 inches thick. Suddenly, that file cannot
 12 now be found.

13 88. In approximately August 2013, MARKGREN'S physician ordered that he not
 14 work indoors when the temperature reached 100 degrees or higher. MARKGREN relayed this
 15 restriction to his supervisor and managers as well as to Human Resources. Despite this request,
 16 SAPUTO continued to require MARKGREN to work in the non-air-conditioned plant including
 17 when the temperature exceeded 100 degrees Fahrenheit. SAPUTO never reviewed alternative
 18 working environments for MARKGREN despite his long-term employment. This failure to
 19 comply with MARKGREN'S physician's work restrictions continued through-out his
 20 employment.

21 89. In 2017, when the new air-conditioned plant became operational, MARKGREN
 22 spoke with Sorey in Human Resources asking if he could transfer to the new plant to comply
 23 with his physician's work restrictions. Sorey told MARKGREN that his pay would be docked
 24 \$2.00/hour if he made the transfer and ultimately, denied his request.

25 90. In approximately 2017, SAPUTO also began requiring operators to wear new,
 26 heavy and non-breathable PPG. Because the gear was heavy and did not breath, MARKGREN
 27 found it difficult to work while wearing the gear. When doing so, he'd become extremely hot
 28 and tired and his heart would begin racing at an unhealthy speed. After the new PPG was

1 implemented, MARKGREN met with Bertelsen and asked if different ventilation could be put
 2 into his work area. Bertelsen rejected the request and simply told MARKGREN to take more
 3 breaks. This recommendation was not doable for several reasons which MARKGREN relayed to
 4 Bertelsen and Munson including because MARKGREN was only given a window of 4.0 hours
 5 daily to clean his machine before the cheese production resumed. If MARKGREN would have
 6 taken breaks as Bertelsen suggested, he would not have finished the cleaning process thereby
 7 jeopardizing the quality of the cheese made for the remainder of his shift. He also would have
 8 violated company protocol because his work area would not have remained clean. Also, the
 9 resting time suggestions did not account for the continually high temperature in the plant
 10 especially during the summer months. As such, this was not an option for MARKGREN. To his
 11 knowledge, Bertelsen never relayed his inquiry to increase the ventilation to anyone else at
 12 SAPUTO. He also spoke to Munson about the PPG and the adverse effects it had on his health;
 13 however, she did nothing.

14 91. After Sory and Bertelsen turned down MARKGREN'S requested
 15 accommodations, MARKGREN continued to work in the non-air-conditioned plant even when
 16 the temperatures exceeded 100 degrees Fahrenheit. Though Munson would occasionally help
 17 MARKGREN with the cleaning, she did not do so regularly. No one from SAPUTO ever talked
 18 to MARKGREN further about any other possible accommodations including but not limited to if
 19 anyone could assist MARKGREN on a regular basis with the cleaning and/or he be provided
 20 alternative PPG.

21 92. Beginning approximately six months prior to his back surgery in November 2018,
 22 until the time MARKGREN went on family leave for the surgery, MARKGREN asked Bertelsen
 23 to change the CIP pan under the tower which was part of the system to wash out the tower. It
 24 was one large heavy pan which was difficult for any person to maneuver by themselves but was
 25 especially difficult for MARKGREN with his back disability and sciatica. Despite his many
 26 requests, Bertelsen never changed the pan before MARKGREN went on leave or while he was
 27 out on leave. When MARKGREN returned from leave in 2019, the larger, heavy pan was still
 28 there. MARKGREN spoke with Bertelsen who said they'd have to begin at square one to figure

1 out what to do. MARKGREN objected and immediately spoke with the then Plant Manager,
 2 Compean. Within two weeks the one single pan was replaced with two lighter pans which
 3 worked quite well. Given the ease with which the pans were changed, MARKGREN did not
 4 understand why Bertelsen had not changed the pans prior to his surgery.

5 93. For approximately the last 2.5 years of employment, MARKGREN was harassed
 6 at work by three younger operators. They'd take his PPG or lock out tags such that
 7 MARKGREN could not start his shift until the item(s) missing was/were replaced. They also
 8 placed hangers in his locker. Each time this happened, MARKGREN told Munson what had
 9 happened and that he thought the three younger operators were doing it. He also told her that the
 10 harassment was bothering him, causing him anxiety and making it an unsafe work environment
 11 because of his heart. Munson knew that MARKGREN was taking medications for his heart
 12 condition, high blood pressure and severe depression. Yet, Munson did nothing to investigate
 13 MARKGREN'S complaints, never referred his complaint to Human Resources and never
 14 stopped the harassment.

15 94. On December 28, 2019, Selkow and Skow created an extremely hostile and
 16 adverse working environment for MARKGREN by refusing to help him clean out the machine
 17 where the cheese was clogged, shutting off the hose then denying doing so, and then shouting
 18 profusely at him. MARKGREN became very anxious, sweaty and clammy and was worried
 19 he'd have a heart attack. He also had not taken his depression medication for a few days while it
 20 was being refilled. These two disabilities together caused MARKGREN to panic. Though
 21 Munson allowed MARKGREN to leave his shift early that day, SAPUTO terminated him a few
 22 days later for allegedly initiating a confrontation between himself, Selkow and Skow. Despite
 23 SAPUTO'S knowledge of MARKGREN'S disabilities, including his heart conditions and severe
 24 depression, no-one ever asked him if those disabilities affected his response to the harassment
 25 and lies by Selkow and Skow on December 28, 2019. This was especially important because
 26 Selkow, Skow and Olson had been systematically harassing MARKGREN for over two years by
 27 repeatedly removing his PPG, lock-out tags or putting hangers in his locker.

28

1 95. Despite the fact that SAPUTO did not fully accommodate MARKGREN'S
2 disabilities and did not fully engage in the inter-active process of determining any
3 accommodations, MARKGREN could and did perform the essential functions of his operator
4 position by daily running his machines and processing cheese. As an employee, MARKGREN
5 was well respected by his co-workers. He even trained other employees to run his machine.

6 96. As a proximate result of SAPUTO'S conduct, MARKGREN has suffered and will
7 continue to suffer substantial losses incurred in earnings and other employment benefits he
8 would have received had SAPUTO not taken such adverse employment action against him.

9 97. Further, and as a proximate result of SAPUTO'S conduct, MARKGREN has
10 suffered and will continue to suffer, emotional distress damages including anxiety, severe
11 depression, much lowered self-esteem, humiliation, sleeplessness, physical weight gain and other
12 emotional distress and compensatory damages in an amount according to proof.
13 MARKGREN'S sudden, wrongful and humiliating termination has also adversely affected his
14 disabilities including his heart condition, high blood pressure and severe depression.

15 98. SAPUTO'S actions, as set forth above, were motivated by animus towards
16 MARKGREN based on his disabilities and requests for reasonable accommodations while
17 working. Said acts were committed maliciously, fraudulently and oppressively, with the
18 wrongful intention of injury MARKGREN, and with an improper and evil motive amounting to
19 malice. Said acts were carried out by managerial employees acting within the course and scope
20 of their employment with SAPUTO and with the intent to injure MARKGREN. MARKGREN
21 is therefore entitled to recover compensatory and punitive damages commensurate with
22 SAPUTO'S wealth, size and as set forth under 42 USC §1981a, 42 USC §12117(a).

23 99. As a result of SAPUTO'S failure to reasonably accommodate MARKGREN'S
24 disabilities as alleged herein and which violated the ADA, MARKGREN was damaged in an
25 amount to be proven at trial, including, but not limited to, economic, compensatory, general and
26 punitive damages, attorney fees and costs, according to proof.

27 WHEREFORE, MARKGREN requests relief as hereinafter provided.
28

1 **FIFTH CAUSE OF ACTION**

2 **DISABILITY DISCRIMINATION**
3 **In Violation of the Americans with Disability Act**

4 **PLAINTIFF MARKGREN**

5 **AGAINST DEFENDANT SAPUTO**

6 100. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth
7 in paragraphs 1 through 99, inclusive, of this Complaint.

8 101. The ADA makes it an “unlawful employment practice” for an employer to
9 discharge a person on the basis of his/her disability. 42 U.S.C. § 12112(a). An employer
10 discharges an employee because of his disability or when it fires the employee for conduct,
11 which was caused by the disability.

12 102. From 2012 forward, MARKGREN suffered from several disabilities while he was
13 employed. He had a serious heart condition since 2012 and went out for surgery in May 2012.
14 Two stents were placed in his heart. He returned to work in approximately June 2012. In July
15 2013, he fainted at work due to an extremely high working temperature of over 100 degrees
16 Fahrenheit and was having chest pains. He was transported via EMS from Saputo to the
17 hospital. He was diagnosed with coronary artery disease, congested heart failure, hypertension
18 and severe depression. He went out on short term disability/family leave. In August 2013, his
19 physician restricted him to working indoors at less than 100 degree Fahrenheit temperature.
20 From then forward, MARKGREN continued to have a serious heart condition which was
21 exacerbated during the summers by working in a non-air-conditioned plant that regularly had
22 temperatures exceeding 100 degrees Fahrenheit. It was also exacerbated by the 2.5 years of
23 harassment he endured from Selkow, Skow and Olson when they’d repeatedly remove his
24 personal gear or tags. He also continued to suffer from severe depression.

25 103. In 2014, MARKGREN suffered a back strain and was diagnosed with sciatica
26 causing him extreme pain while at work. In December 2016, he underwent bariatric surgery and
27 returned to work in early 2017.

1 104. In July 2018, MARKGREN went to the emergency room complaining of
2 dizziness, being clammy, sweaty and weak related to his heart. He went out on a family leave in
3 August 2018 to attend a specialized cardiac program.

4 105. In mid-November 2018, MARKGREN underwent major back surgery for anterior
5 and posterior lumbar fusion with decompression and laminectomy. In December 2018, the
6 doctors found an aortoiliac aneurysm. He returned to work in approximately April-May 2019.

7 106. At all times, MARKGREN provided the requested medical and leave information
8 regarding his disabilities. He also requested reasonable accommodations he needed at work. It
9 was also common knowledge with Human Resources, Safety and his management that he
10 suffered from these disabilities.

11 107. SAPUTO discriminated against MARKGREN when it terminated him in
12 December 2019 without any warnings or counseling because of his disabilities related to his
13 heart, his back and his severe depression.

14 108. In December 2019, SAPUTO falsely accused MARKGREN of not following its
15 lock-out tag-out procedures when emptying cheese from the tower of his machine yet Munson,
16 MARKGREN'S supervisor, herself wrote that the “lock out tag out process for this part of the
17 machine had not yet been decided so the belts were left on at the time to crumble up cheese in
18 order to not plug up the star valve so it could run in order to keep the line running”. As such,
19 MARKGREN did not violate SAPUTO'S safety protocols because none were in place. As such,
20 this alleged reason for terminating his employment days later was false.

21 109. SAPUTO next discriminated against MARKGREN when it accused him of
22 initiating a confrontation between himself and Selkow and Skow on December 28, 2019. A
23 review of the incident shows that Skow refused to help MARKGREN clean out the filler
24 machine which violated SAPUTO policies; as MARKGREN was cleaning up the cheese on the
25 floor, Selkow then turned off the first hose; when asked if he'd turned off the hose Selkow
26 denied he did but the pliers needed to do so were in his pocket; during the discussion between
27 MARKGREN and Selkow, Skow walked up and began yelling at MARKGREN, ordering him to
28 go back to the other end of the floor. MARKGREN turned and walked away. He asked Munson

1 if he could leave because his anxiety level was increasing dramatically and he was fearful he'd
 2 suffer another heart attack at work. The fact that MARKGREN had not been able to refill his
 3 depression medication also affected his reaction, increasing his panic levels. Despite
 4 MARKGREN'S concerns for his heart and the lack of depression medication, SAPUTO
 5 terminated him for initiating the confrontation. In doing so, SAPUTO ignored testimony that
 6 Selkow's and Skow's reactions were fake, MARKGREN had complained for over two years that
 7 Selkow and Skow had been harassing him, MARKGREN had turned and walked away from
 8 Skow and MARKGREN had not run into Skow as he was leaving. As such, SAPUTO'S
 9 reasoning was false and facile and instead, terminated MARKGREN because of his disabilities.

10 110. SAPUTO also discriminated against MARKGREN when SAPUTO replaced
 11 MARKGREN with individuals, who on information and belief, did not have a disability.

12 111. SAPUTO engaged in a pattern and practice of discriminating against employees,
 13 including MARKGREN, on the basis of their protected categories, including their disabilities, in
 14 violation of the ADA by engaging in the course of conduct set forth above.

15 112. As a proximate result of SAPUTO'S conduct, MARKGREN has suffered and will
 16 continue to suffer substantial losses incurred in earnings and other employment benefits he
 17 would have received had SAPUTO not taken such adverse employment action against him.

18 113. Further, and as a proximate result of SAPUTO'S conduct, MARKGREN has
 19 suffered and will continue to suffer, emotional distress damages including anxiety, severe
 20 depression, humiliation, much lowered self-esteem, sleeplessness, weight gain and other
 21 emotional distress and compensatory damages in an amount according to proof.

22 MARKGREN'S sudden, wrongful and humiliating termination has also adversely affected his
 23 disabilities including his heart condition, high blood pressure and severe depression.

24 114. SAPUTO'S actions, as set forth above, were motivated by animus towards
 25 MARKGREN based on his disabilities and requests for reasonable accommodations while
 26 working. Said acts were committed maliciously, fraudulently and oppressively, with the
 27 wrongful intention of injury MARKGREN, and with an improper and evil motive amounting to
 28 malice. Said acts were carried out by managerial employees acting within the course and scope

1 of their employment with SAPUTO and with the intent to injure MARKGREN. MARKGREN
2 is therefore entitled to recover compensatory and punitive damages commensurate with
3 SAPUTO'S wealth, size and as set forth under 42 USC 1981a, 42 USC §12117(a).

4 115. As a result of SAPUTO'S discriminatory acts as alleged herein, including
5 violation of the ADA, MARKGREN was damaged in an amount to be proven at trial, including,
6 but not limited to, economic, compensatory, general and punitive damages, attorney fees and
7 costs, according to proof.

8 WHEREFORE, MARKGREN requests relief as hereinafter provided.

9 **SIXTH CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF FEDERAL
11 FAMILY AND MEDICAL LEAVE ACT
12 THE AMERICANS WITH DISABILITIES ACT and ADEA**

13 **PLAINTIFF MARKGREN**

14 **AGAINST DEFENDANT SAPUTO**

15 116. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth
16 in paragraphs 1 through 115, inclusive, of this Complaint.

17 117. At all times herein mentioned, the Family and Medical Leave Act, 29 USC §2601
18 *et seq.*, was in full force and effect and binding on SAPUTO. The FMLA requires SAPUTO to
19 grant employees with a serious medical condition up to twelve weeks of leave. An employee is
20 entitled to reinstatement to his/her former job at the end of any FMLA leave. Indeed, an
21 employee is guaranteed the right to reinstatement to “the same or comparable position” or to an
22 “equivalent position”. An employer is also prohibited from retaliating against an employee who
23 has taken time off for serious medical conditions.

24 118. The ADA also prohibits an employer from retaliating against an employee who
25 requests reasonable accommodations on the job.

26 119. The ADEA prohibits retaliation when an employee complains of harassment in
27 the workplace based upon their age.

28 ///

1 120. MARKGREN'S serious medical conditions and disabilities began in 2012 when
2 he suffered a heart attack and went out on a medical leave of absence. He underwent heart
3 surgery and two stents were placed in his heart. In 2013, he went to the emergency room via
4 EMA and was diagnosed with coronary artery disease, congested heart failure, hypertension and
5 depression. He was given a work restriction of not working inside if the temperature exceeded
6 100 degrees Fahrenheit. He requested accommodations but none were given. In 2016, because
7 of his sciatica, his physician limited him to working 6 hours/day. In March 2016, his physician
8 pulled him off work. In July 2018, he again went to the emergency room with complaints of
9 dizziness, being clammy, sweaty and weak. He went on a family medical leave starting in
10 approximately August 2018 to attend a specialized cardiac program for two months. In
11 November 2018, he went out on family leave to undergo back surgery for anterior and posterior
12 lumbar fusion. In December 2018, the doctors found an aortoiliac aneurysm. He returned to
13 work in approximately April-May 2019.

14 121. Several times from 2012 forward, MARKGREN requested reasonable
15 accommodations on the job. The most recent were in 2017 and then again in 2019 after he
16 returned to work. In 2017, he requested a transfer to the new air-conditioned plant also in
17 Almena and asked for accommodations on his PPG equipment. In approximately Spring 2018
18 and then again when he returned from family leave in early 2019, MARKGREN asked Bertelsen
19 to change the CIP pan under the tower which was part of the system to wash out the tower. It
20 was one large heavy pan which was difficult for any person to maneuver by themselves. It was
21 especially difficult for MARKGREN with his back disability and sciatica. Bertelsen never
22 changed the pan so MARKGREN went to the Plant Manager, Compean in 2019. Within two
23 weeks the one single pan was replaced with two lighter pans which worked quite well. Given the
24 ease with which the pans were changed, MARKGREN did not understand why Bertelsen had not
25 changed the pans prior to his surgery.

26 122. At all times, MARKGREN informed SAPUTO, including Human Resources, his
27 supervisors and managers, of his serious medical conditions, disabilities and family and medical
28 leaves of absences. He consistently provided the medical forms requested by SAPUTO.

1 123. For the last two and a half years of his employment, MARKGREN complained to
2 Munson, his supervisor, that he was being harassed by Selkow, Skow and Olson when his PPG
3 and lock-out-tag-out tags were missing or when he found hangers in his locker. He would do so
4 once a week or twice each month on the average. He also told Munson that the continued
5 harassment was adversely affecting his health, increasing his anxiety and threatening his heart.
6 SAPUTO did nothing.

7 124. In 2019, new management was employed at the Almena plants including Miller as
8 the Plant Manager and Schurman, Housner and Ellefson in Human Resources. Shortly after he
9 returned to work and after Miller became the Plant Manager, SAPUTO used the events of
10 December 23, 2019 and December 28, 2019 to retaliate against MARKGREN for taking his
11 family and medical leaves, asking for reasonable accommodations at work and complaining of
12 harassment. In retaliation for these requests, SAPUTO terminated MARKGREN in late
13 December 2019 for false reasons. Indeed, SAPUTO accused MARKGREN of violating lock out
14 tag out procedures which in fact, did not exist. They then accused MARKGREN of initiating a
15 confrontation between himself and Selkow and Skow ignoring Selkow's and Skow's continual
16 harassment from MARKGREN for the previous two years and witnesses who corroborated
17 MARKGREN'S version of what happened that day.

18 125. On information and belief, MARKGREN believes that other employees,
19 including those with disabilities, who requested reasonable accommodations on the job and/or
20 who took time off for family and medical leaves and/or who complained of harassment in the
21 workplace, have also been retaliated against especially by the new management at Saputo.

22 126. As a result of these actions against him, MARKGREN has suffered not only the
23 loss of his employment, including wages and benefits, but also has suffered severe emotional and
24 physical distress.

25 127. SAPUTO'S actions were motivated by animus toward MARKGREN based on his
26 disabilities, need for family and medical leaves of absence and requests for reasonable
27 accommodations and complaints of harassment based on his age. Said acts were committed
28 maliciously, fraudulently and oppressively, with the wrongful intent of injuring MARKGREN

1 and with an improper and evil motive amounting to malice. SAPUTO'S acts of intentionally
2 retaliating against MARKGREN were carried out by managerial employees acting within the
3 course and scope of their employment with SAPUTO. MARKGREN is therefore entitled to
4 punitive damages pursuant to statute.

5 128. As a result of SAPUTO'S malicious acts of retaliation as alleged herein,
6 MARKGREN was damaged in an amount to be proven at trial, including, but not limited to,
7 compensatory, general and punitive damages, attorneys' fees and costs according to proof.

8 WHEREFORE, MARKGREN requests relief as hereinafter provided.

9 **SEVENTH CAUSE OF ACTION**

10 **NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

11 **PLAINTIFFS MARKGREN AND STROHSCHEIN**

12 **AGAINST ALL DEFENDANT SAPUTO**

13 129. MARKGREN and STROHSCHEIN repeat and re-allege the allegation set forth in
14 paragraph 1 through 128, inclusive, of this Complaint.

15 130. Negligent Infliction of Emotional Distress is severe emotional distress that is
16 proximately caused by the defendant's negligent conduct or willful violation of a statutory
17 standard. Federal law mandates that an employer take the necessary action that is reasonably
18 calculated to end illegal and inappropriate conduct creating a discriminatory and hostile work
19 environment for one or more of its employees. An employer is thereby liable for the injury
20 caused to an employee by its failure, whether willful or negligent, to eradicate the illegal conduct
21 of another of its employees, managers or agents that is causing another foreseeable harm.

22 131. SAPUTO'S conduct, as set forth above, whether negligent or otherwise, caused
23 MARKGREN and STROHSCHEIN severe emotional distress when they discriminated against
24 them because of their age and because of their gender. Indeed, SAPUTO knew or reasonably
25 should have known that their sudden termination of MARKGREN and STROHSCHEIN,
26 including for false reasons, would cause each emotional distress. As such, SAPUTO'S actions
27 violated known public policy as set forth in Title VII and the ADEA.

28

1 132. SAPUTO'S conduct towards MARKGREN, in terminating him after he'd (i)
2 taken a family and medical leave for a serious health condition/disability, (ii) requested
3 reasonable accommodations on the job and (iii) complained of harassment in the workplace by
4 younger employees, was similarly violative of public policy including the FMLA, the ADA and
5 the ADEA. Thus, SAPUTO knew or reasonably should have known that their retaliation and
6 sudden termination of MARKGREN would cause him emotional distress.

7 133. As a proximate result of SAPUTO'S conduct, MARKGREN and
8 STROHSCHEIN have suffered, and will continue to suffer damages including substantial losses
9 in earnings and other employment benefits each would have received had SAPUTO not
10 wrongfully and discriminatorily terminated their employment.

11 134. MARKGREN and STROHSCHEIN also suffered and continue to suffer
12 emotional distress including but not limited to anxiety, worry about earnings and insurance,
13 sleeplessness, clenching of teeth, low self-esteem, depression and increased anxiety and concern
14 by MARKGREN for his heart, high blood pressure and depression, all to their damage in an
15 amount according to proof.

16 135. SAPUTO, and each of them, did the acts alleged herein maliciously, fraudulently
17 and oppressively, with the wrongful intent to injure MARKGREN and STROHSCHEIN, from an
18 improper and evil motive amounting to malice and in conscious disregard of MARKGREN's and
19 STROHSCHEIN'S rights. The acts complained of were known to, authorized and ratified by
20 SAPUTO. MARKGREN and STROHSCHEIN are therefore entitled to recover punitive
21 damages from SAPUTO, and each of them, in an amount according to proof.

WHEREFORE, MARKGREN and STROHSCHEIN request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

NEGLIGENCE HIRING AND RETENTION

PLAINTIFFS MARKGREN AND STROHSCHEIN

AGAINST DEFENDANT SAPUTO

27 136. MARKGREN and STROHSCHEIN repeat and re-allege the allegation set forth in
28 paragraphs 1 through 135, inclusive, of this Complaint.

1 137. SAPUTO had a duty and an obligation under Title VII, the ADA, the ADEA and
2 the FMLA to prevent and to protect its employees from discrimination, retaliation and
3 harassment in the workplace. This duty is imposed for the specific protection of its employees.
4 Here, SAPUTO'S duty was heightened because it knew MARKGREN was protected under all of
5 these laws and that STROHSCHEIN was protected under Title VII and the ADEA. More
6 importantly, the very individuals hired to protect employees in the workplace, Human Resources,
7 plus the newly hired Plant Manager, were the individuals who decided to wrongfully terminate
8 both MARKGREN and STROHSCHEIN based upon their protected statuses and for reasons that
9 were false. Thus, they themselves knew that they were discriminating and retaliating against
10 both plaintiffs in the workplace. To prevent said discrimination and harassment, SAPUTO had a
11 duty to hire, train and supervise management personnel, including in Human Resources and the
12 Plant Manager, in such a manner so that the type of tortious conduct as herein alleged would not
13 occur.

14 138. SAPUTO breached its duty to protect its employees, primarily MARKGREN and
15 STROHSCHEIN, from being discriminated and retaliated against and harassed in the workplace
16 on the basis of their age and gender and MARKGREN because of his disabilities and family
17 leaves, by repeatedly failing to properly hire, train and supervise its management employees.
18 Although readily able to do so, SAPUTO willfully and recklessly failed to adequately hire
19 professional managers or supervisors to work with its employees including MARKGREN and
20 STROHSCHEIN. Instead, SAPUTO repeatedly hired either younger and/or inexperienced
21 supervisors and managers including Miller, Featherly, Munson, Bertelson, Schurman, Ellefson
22 and Housner, or did not train them regarding protections afforded to employees in the workplace.

23 139. Here, MARKGREN'S own supervisor, Munson, knew of the harassment he was
24 subjected to on a regular basis for almost two years. Yet, she never stopped the harassment or
25 disciplined the harassers. Management, including Human Resources, Munson and Bertelson,
26 failed to reasonably accommodate MARKGREN'S disabilities and completely shut him down
27 when he asked for a transfer, proper ventilation or a change in pans. Finally, SAPUTO failed to
28 investigate the allegations against both MARKGREN and STROHSCHEIN and instead, ratified

1 their wrongful terminations based on false accusations. SAPUTO could have but chose not to
2 prevent the wrongful terminations of two very long-term employees based upon their protected
3 categories of age, being white and male, among others

4 140. SAPUTO also breached its duty to MARKGREN and STROHSCHEIN as
5 employees by negligently and willfully failing to monitor much less discipline Schurman,
6 Ellefson, Housner, Featherly and/or Miller. Instead, SAPUTO ratified their discrimination of
7 MARKGREN and STROHSCHEIN when they terminated them in 2019 and 2020 respectively.
8 They further ratified the discrimination when they awarded MARKGREN'S and
9 STROHSCHEIN'S positions to younger, less experienced individuals, one of whom was female.
10 Indeed, these younger supervisors and managers proximately caused and allowed this
11 harassment, retaliation and discrimination of MARKGREN and STROHSCHEIN to continue.

12 141. As a proximate result of SAPUTO'S conduct, MARKGREN and
13 STROHSCHEIN have suffered, and will continue to suffer damages including substantial losses
14 in earnings and other employment benefits each would have received had SAPUTO not
15 discriminatorily terminated their employment. Further, MARKGREN and STROHSCHEIN
16 have suffered and continue to suffer emotional distress all to their damage in an amount
17 according to proof. The emotional distress has also adversely affected MARKGREN'S
18 disabilities including his heart condition, high blood pressure and depression.

19 142. SAPUTO, and each of them, did the acts alleged herein maliciously, fraudulently
20 and oppressively, with the wrongful intent to injure MARKGREN and STROHSCHEIN, from an
21 improper and evil motive amounting to malice and in conscious disregard of MARKGREN'S
22 and STROHSCHEIN'S rights under Title VII, the ADEA, the ADA and the FMLA. The acts
23 complained of were known to, authorized and ratified by SAPUTO. MARKGREN and
24 STROHSCHEIN are therefore entitled to recover punitive damages from SAPUTO, and each of
25 them, in an amount according to proof.

26 WHEREFORE, MARKGREN and STROHSCHEIN request relief as hereinafter
27 provided.

28 ///

NINTH CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

PLAINTIFF PETER MARKGREN

AGAINST DEFENDANT SAPUTO

143. MARKGREN and STROHSCHEN repeat and re-allege the allegations set forth in paragraphs 1 through 142, inclusive, of this Complaint.

144. Intentional infliction of emotional distress is extreme and outrageous conduct that intentionally or recklessly causes another severe emotional distress. SAPUTO, including its managers and supervisors, openly displayed hostility towards MARKGREN and STROHSCHEIN based upon their age and gender. SAPUTO intentionally allowed the three younger male operators to harass MARKGREN during the last 2.5 years of employment when they took his personal protective gear or lock out tags and when they stuffed his locker with hangers. Each time it happened, MARKGREN reported it to Munson who though she promised to resolve it, never did. Human Resources never got involved even after MARKGREN told Munson that the continued harassment was increasingly bothering him, was causing him anxiety and he was beginning to worry about his health, including among other things, his heart, when he came to work. MARKGREN often relayed that he was finding it difficult to come to work. Yet, Munson stood by and did nothing. The harassment peaked on December 28, 2019 when Skow refused to help MARKGREN remove cheese from his machine, Selkow turned off the hose MARKGREN had turned on to clean up the cheese and then denied it, and Skow began to yell at MARKGREN ordering him to go back to the other end of the floor. MARKGREN, shaking and trembling and beginning to panic, did as Skow demanded. He then called Munson telling her he had to leave immediately as he was concerned he'd have another heart attack. SAPUTO then terminated MARKGREN for false reasons yet supported the younger employees, Selkow, Skow and Olson, by allowing them to file false complaints against MARKGREN and harass him. SAPUTO'S treatment of MARKGREN violated several federal statutes and has caused MARKGREN, after over 30 years of dedicated employment, severe emotional distress.

1 145. SAPUTO also intentionally caused MARKGREN severe emotional distress when
2 he asked on several occasions for reasonable accommodations such as increased ventilation in
3 his work area, a transfer to the new air-conditioned plant and changing out a heavy pan. Instead
4 of discussing these with MARKGREN, the requests were shot down immediately including by
5 Human Resources and Safety employees. His supervisor, knowing the adverse effect the work
6 environment was having on MARKGREN, also failed to follow up to determine whether or not
7 any reasonable accommodations were available for MARKGREN. This meant that
8 MARKGREN was forced to work in extreme temperatures in an often-hot plant, especially in
9 summers, in direct violation of his physician's orders. MARKGREN was under extreme
10 pressure to report to work though he was always worried about having another heart attack at
11 work.

12 146. By knowingly and willfully allowing the continuing harassment, discrimination
13 and retaliation of MARKGREN based on his age, disabilities, requests for accommodations, use
14 of family and medical leave and gender by his younger male co-workers and supervisors and
15 managers, SAPUTO'S conduct, as set forth above, was extreme and outrageous, beyond all
16 bounds of decency and an abuse of the authority and position of SAPUTO and each of them.
17 SAPUTO'S conduct of intentionally violated several statutory employment laws, was intended to
18 and did proximately cause MARKGREN to suffer severe emotional distress. Alternatively, said
19 conduct was done in conscious disregard of the probability of causing such distress. Indeed,
20 SAPUTO'S conduct caused MARKGREN injuries beyond those normally risked in one's
21 employment or normally expected to occur in the workplace. As such, SAPUTO abused its
22 position of authority toward MARKGREN and allowed conduct to continue which only
23 humiliated and deeply upset her.

24 147. As a proximate result of SAPUTO'S conduct, MARKGREN has suffered, and
25 will continue to suffer damages including substantial losses in earnings and other employment
26 benefits he would have received had SAPUTO not wrongfully harassed, discriminated against
27 and retaliated against him ultimately terminating his employment. MARKGREN has suffered
28 and continues to suffer emotional distress which has manifested itself physically especially

1 relating to his heart, blood pressure, weight and depression, all to his damage in an amount
2 according to proof.

3 148. SAPUTO, and each of them, did the acts alleged herein maliciously, fraudulently
4 and oppressively, with the wrongful intent to injure MARKGREN, from an improper and evil
5 motive amounting to malice and in conscious disregard of MARKGREN's rights. The acts
6 complained of were known to, authorized and ratified by SAPUTO. MARKGREN is therefore
7 entitled to recover punitive damages from SAPUTO, and each of them, in an amount according
8 to proof.

9 WHEREFORE, MARKGREN requests relief as hereinafter provided.

10 **TENTH CAUSE OF ACTION**

11 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

12 **PLAINTIFFS MARKGREN and STROHSCHEIN**

13 **AGAINST DEFENDANT SAPUTO**

14 149. MARKGREN and STROHSCHEIN repeat and re-allege the allegations set forth
15 in paragraph 1 through 148, inclusive, of this Complaint.

16 150. SAPUTO allowed MARKGREN to be harassed for the final 2.5 years of
17 employment after over 30 years of exemplary performance and service to the company. The
18 harassment culminated in the events of December 28, 2019 when MARKGREN was confronted
19 by Selkow and Skow, both of whom harassed, berated, yelled at and lied to MARKGREN.
20 Instead of disciplining Selkow and Skow, SAPUTO disciplined and terminated MARKGREN.
21 MARKGREN believes he was terminated because of his age, 55; because he was male; because
22 he had disabilities and requested reasonable accommodations for several years and because he'd
23 taken family and medical leaves to deal with his serious medical conditions and disabilities.
24 SAPUTO'S actions violated public policy under Title VII, the ADEA, the ADA and FMLA
25 which protect employees in the workplace from discrimination, retaliation and harassment
26 because of their age, gender, disabilities and family leaves of absence.

27 151. SAPUTO also violated public policy under Title VII and the ADEA when it
28 wrongfully terminated STROHSCHEIN for false reasons; failed to investigate the allegations

1 against STROHSCHEIN after Miller became the Plant Manager especially in November 2019
2 and early March 2020; promoted a much younger new hire into his position and failed to
3 discipline much less terminate another female supervisor though she also violated management
4 instructions and protocols. Thus, SAPUTO violated public policy by discriminating against
5 STROHSCHEIN based on his age and in reverse, based on his gender.

6 152. As a proximate result of SAPUTO'S conduct, MARKGREN and
7 STROHSCHEIN have suffered and will continue to suffer substantial losses incurred in earnings
8 and other employment benefits each would have received had SAPUTO not wrongfully
9 terminated their employment.

10 153. Further, and as a proximate result of SAPUTO'S conduct, MARKGREN and
11 STROHSCHEIN have suffered, and will continue to suffer, emotional distress damages
12 including anxiety, depression, humiliation, anger, sleeplessness, weight gain and other emotional
13 distress in an amount according to proof. The emotional distress has also exacerbated
14 MARKGREN'S disabilities of coronary heart disease, depression and high blood pressure.

15 154. SAPUTO'S actions, as set forth above, were motivated by animus towards
16 MARKGREN because of his age, gender, disabilities and time off for family leave. SAPUTO'S
17 actions, as set forth above, were motivated by animus towards STROHSCHEIN because of his
18 age and gender, male. Said acts were committed maliciously, fraudulently and oppressively,
19 with the wrongful intention of injuring MARKGREN and STROHSCHEIN, and with an
20 improper and evil motive amounting to malice. Said acts were carried out by managerial
21 employees acting within the course and scope of their employment with SAPUTO and with the
22 intent to injure MARKGREN and STROHSCHEIN. They are each then entitled to recover
23 compensatory and punitive damages commensurate with SAPUTO'S wealth.

24 155. As a result of SAPUTO'S discriminatory acts as alleged herein, including
25 violation of Title VII, the ADEA, the ADA, and the FMLA, MARKGREN and STROHSCHEIN
26 were damaged in an amount to be proven at trial, including, but not limited to, compensatory,
27 general and punitive damages and attorneys' fees, according to proof and as provided by the
28 respective state and federal statutes.

1 WHEREFORE, MARKGREN and STROHSCHEIN request relief as hereinafter provided.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

4 1. For all actual, consequential, and incidental losses, including, but not limited to
5 the loss of income and benefits, including back pay and front pay, according to proof, together
6 with prejudgment for all causes of action;

7 2. For general, compensatory and non-economic damages for the third through tenth
8 causes of action;

9 3. For liquidated damages for the first and second causes of action;

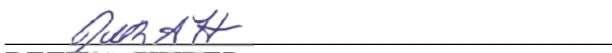
10 4. For exemplary and punitive damages for the third through tenth causes of action;

11 5. For costs of suit herein, including reasonable attorneys' fees;

12 6. For prejudgment interest at the prevailing legal rate; and

13 7. For such other and further relief as the Court may deem proper.

14 DATED: July 2, 2021 THE HUBER LAW FIRM

15
16 By: 
17 BETH A. HUBER
18 Attorneys For PLAINTIFFS PETER MARKGREN
19 And DARYL STROHSCHEIN

20 **JURY DEMAND**

21 Plaintiff demands trial by jury in this action

22 DATED: July 2, 2021 THE HUBER LAW FIRM

23 By: 
24 BETH A. HUBER
25 Attorneys For
26 PLAINTIFFS PETER MARKGREN and
27 DARYL STROHSCHEIN